IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.54 OF 2004
WITH
WRIT PETITION NO.317 OF 2004

WRIT PETITION NO.54/04 :

Hindustan Lever Limited. ...Petitioner.
Vs.
Hindustan Lever Research Centre
Employees' Union. ...Respondent.
....
Mr. P.K. Rele, Senior Advocate with Ms.Mitra Das, Mr. Rajesh Rele and Mr. Piyush Shah for the Petitioner.
Mr. S. K. Talsania, Senior Advocate with Mr.Kiran Bapat and Danial D'Costa for the Respondent.
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.....

CORAM : DR.D.Y.CHANDRACHUD, J.

September 26, 2006.

ORAL JUDGMENT :

A conspectus:

I

The management of Hindustan Lever Limited and the Union representing the workmen of the Research Centre are before the Court in a challenge to an award of the Industrial Tribunal dated 25th August 2003 upon a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947. The dispute centers around a demand made by the Union on behalf of Laboratory Assistants engaged at the Research Centre at Andheri for a classification of their grades in parity with those granted to the Laboratory Assistants of the same management in the factory at Sewri. The grades of Laboratory Assistants in the establishment at Sewri were revised by an award of the Industrial Tribunal dated 22nd June 1984 and the Laboratory Assistants were directed to be placed in Grade T-1, on the basis that the work that was being rendered had ceased to be manual and was technical in nature. The award of the Industrial Tribunal was confirmed by this Court and by the Supreme Court. Until the award was implemented by the management in or about December 1995, there was admittedly a parity of service conditions between the workmen at the Research Centre and those in the factory at Sewri as well as the

Head Office. This parity, it is again an admitted position, had continued to subsist between 1958 when the Research Centre was established, until the management while implementing the award in favour of the Laboratory Assistants at the factory declined to extend the same benefits to the Laboratory Assistants at the Research Centre. On a reference to adjudication, the Industrial Tribunal has held that the Laboratory Assistants at the Research Centre are entitled to a continuation of the parity of classification with their counterparts in the factory at Sewri and that the content and quality of the respective job functions being similar, no justification for disturbing the parity that existed as a historical fact, for several decades, has been made out by the management. The management has moved this Court in a substantive challenge to the award. The Union on its part is aggrieved by that portion of the award by which the Industrial Tribunal has directed the implementation of the award from the date of the reference and not from a date anterior thereto.

2. Upon the petition of the management being admitted on 21st April 2004, an ad-interim stay of the operation of the award was refused but, there was a direction to the effect that in the event

that the management succeeded before this Court, the amount which was paid over to the workmen would be deducted together with interest at the rate of 12% per annum. The award has been implemented and payments have been disbursed to the workmen.

3. For the reasons which will now be elaborated, this Court has arrived at a determination, having heard Counsel appearing on behalf of the management and the workmen, that the award of the Tribunal does not warrant interference under Article 226 of the Constitution.

II

The dispute:

4. The dispute between the management and the workmen in the present case arises out of an order of adjudication by the Industrial Tribunal pursuant to a reference by the State Government of the following dispute :

> "Union demands that the grades of the Laboratory Assistants working at the Research Centre shall be upgraded as per the new grades awarded by the Industrial Tribunal in reference IT No.37 of 1976 to the Laboratory Assistants working at the Sewree Factory. The other benefits as per the award of Industrial Tribunal in reference IT NO.37 of 1976 also should be extended

to the Laboratory Assistants working at the Research Centre".

III

Parity in Conditions of Service:

5. Hindustan Lever Limited established a Central Laboratory in 1953 at its establishment at the Factory at Sewri, Mumbai. A few years after the establishment of the Central Laboratory, a Research Centre was established in 1958 at the Sewri Factory. Appointments issued to Laboratory Assistants both at the Central Laboratory on the one hand and at the Research Centre on the other, were in similar terms; the appointments being in Grade-I to the post of Junior Laboratory Assistants. The conditions of service of the Laboratory Assistants at both the Central Laboratory and at the Research Centre were identical since the workmen were covered by the same settlement of 1954 and service between the two Sections was transferable.

6. In the year 1967, the Research Centre was shifted from the Factory at Sewri to Andheri. All the Laboratory Assistants who were engaged in the Research Centre came to be transferred on the same terms and conditions of service to Andheri. In 1969, the

Factory workmen at Sewri terminated the Industrial settlement of 1964 and preferred a fresh Charter of Demands which was referred to adjudication.[1] In 1973, the workmen at the Research Centre also terminated the settlement of 1964 and preferred a fresh Charter of Demands. On 28th November 1973, a settlement was arrived at to govern the Charter of Demands of the workmen at the Research Centre. The management agreed to maintain a parity of service conditions in that the benefit of the industrial adjudication covering the workmen at the Sewri Factory was to govern the Research Centre. In respect of various demands, the settlement contained the following assurance by the management.

> "In respect of these demands the Company hereby assures the Union that whatever is the ultimate outcome of the adjudication proceedings in References Nos.IT 86/70 and 203/70 before Shri M.G. Chitale, Industrial Tribunal Maharashtra, concerning the Company's workmen in its Factory at Haji Bunder, Sewri, will be extended to the employees in Research Centre, where applicable. It is clarified that the demand concerning incentives which is pending adjudication in the above Reference IT 86 has no applicability to Research Centre."

Clause 5 of the settlement also provided thus:

> "It is agreed that the period of this settlement will be the same as would apply to the workmen in the Company's

1 Reference Nos.86 and 203 of 1970

> factory at Haji Bunder, Sewri, as a result of the ultimate outcome of the adjudication proceedings in the above Reference IT 86/70 and 205/70.
>
> It is also agreed that if during the pendency of this settlement any benefit accrues to the workmen in the Company's factory at Haji Bunder, Sewri in respect of the demands 5, 6, 7, 8, 9 and 10 in the Union's letter of 24th August 1973, either as a result of any future settlement or award, this will be extended to the employees in Research Centre."

7. On 8th August 1974, the reference to adjudication on the Charter of Demands of the workmen at Sewri Factory was disposed of by an award of the Industrial Tribunal (Chitale Award). It is an undisputed position that the Laboratory Assistants were also covered by the award. In 1974, the benefits of the Chitale Award came to be extended to the workmen at the Research Centre including the Laboratory Assistants in accordance with terms of settlement dated 28th November 1973 noted above.

8. The Chitale Award was terminated in 1975 by the workmen at the Sewri Factory. On their part, the workmen at the Research Centre terminated the settlement of 28th November 1973 on 15th September 1975. A fresh Charter of Demands was raised

in 1975 by the workmen at Sewri Factory on the one hand, and by the workmen at the Research Centre on the other. On 11th May 1977, the workmen at the Sewri Factory signed an Industrial settlement and parties jointly requested the State Government to refer certain demands for adjudication under Section 10 of the Industrial Disputes Act, 1947. A reference was accordingly made by the State Government on 26th May 1977 (Reference IT 123 of 1977). A parallel development had taken place on 7th July 1977 by which the management and the workmen at the Research Centre entered into a settlement. Clause 2(a) of the settlement provided that the management had agreed to extend the interim settlement arrived at for the Factory to the employees of the Research Centre at Andheri. Clause 3 of the Settlement inter alia provided that the ultimate outcome of the the adjudication proceedings concerning the factory workmen will be extended to the employees at the Research Centre. The management had in that adjudication claimed a ceiling on dearness allowance and it was accordingly clarified that the final outcome of the adjudication proceedings on the demand of the management with regard to dearness allowance would also be binding on the workmen and the management. Clause 4 of the Settlement contained a provision in

regard to classification which will form the subject matter of some discussion in this judgment at a subsequent stage. Hence it is not being referred to specifically here.

9. On 21st April 1979, the management and the workmen at the Sewri factory arrived at a settlement in respect of certain demands that had been referred to adjudication in Reference 123 of 1977. Adopting the terms of the settlement, the Industrial Tribunal on 27th April 1979 passed a Part-I Award in terms thereof. Close on the heels of the settlement that was arrived at for the Sewri Factory, on 11th May 1979, the management and the workmen at the Research Centre agreed to the extension of the same benefits at the Research Centre. This agreement was embodied in the Minutes of a decision taken on 11th May 1979 to the following effect :

> "1. The parties referred to the settlement dated 7th July, 1977, between the Company and the workmen employed in the Company's Research Unit at Andheri. They noted the recent settlement dated 21st April, 1979, between the Company and its workmen employed in the Bombay Factory of the Company covering hourly-rated staff. They also noted the order of the Industrial Tribunal dated 27th April 1979, giving an award in terms of the above Bombay Factory settlement dated 21st April 1979.
>
> -2. In terms of paragraphs 3 and 4 of the

> settlement dated 7th July 1977, it was agreed that the terms and conditions of the Bombay Factory settlement will be extended, whenever applicable to the corresponding categories of workmen in Research Unit, and it is understood that this settlement will be operative upto 31st December, 1981, in respect of these categories of workmen in Research Unit.
>
> -3. Arrears on account of the above will be paid on or before 12th June, 1979." (emphasis supplied).

At this stage, it would be material to note that the benefits which were envisaged in the settlement of 21st April 1979 for the Hourly Rated Staff at the Factory were extended fully to the employees at the Research Centre including the Laboratory Assistants. The decision that was arrived at between the management and the workmen was that the terms of the settlement for the Sewri Factory will be extended to corresponding categories of the workmen at the Research Centre. It is an undisputed position before the Court that the benefits under the Part-I Award that were given to the Laboratory Assistants at the factory were also extended to the Laboratory Assistants at the Research Centre. Obviously, this was on the footing that the Laboratory Assistants at the Research Centre constituted a corresponding category to the Laboratory Assistants at the Sewri Factory.

IV

The dispute relating to reclassification :

10. The Laboratory Assistants engaged in the factory at Sewri had demanded a reclassification of their grades. The Laboratory Assistants in the Factory at Sewri were placed in Grades I, K and M and the demand was for placement in what is known as T-Grades. On 13th January 1976 this demand for reclassification was referred for adjudication to the Industrial Tribunal in **Reference (IT) 37 of 1976**. During the pendency of the adjudication proceedings in Reference (IT) 37 of 1976 (which related to classification of Laboratory Assistants) and Reference (IT) 123 of 1976 (relating to the remaining demands in the Charter of 1976) the Hourly Rated Workmen, including the Laboratory Assistants at the Factory terminated the earlier Award and Settlement and raised a fresh Charter of Demands. On 3rd February 1982, a Charter of Demands was submitted on behalf of the employees at the Research Centre. In response to a letter addressed by the Union to the Assistant Commissioner of Labour, the management had this to say in a letter dated 29th December

1982:

> "Another point which is worth mentioning is that it was by virtue of settlement in November 1973 with the Bombay Labour Union that we extended to the Research Centre the terms and conditions of employees as awarded by the Industrial Tribunal in our Bombay Factory. On expiry of the Award, the Bombay Labour Union again submitted a Charter of Demands and after your department went into the demands it thought it fit to close the matter. However, we extended to the Research Centre the terms and conditions that we had arrived at by virtue of a settlement in our Sewri Factory in 1979. What is important to note here is that the present terms and conditions are on the basis of settlement we had in our Bombay Factory. As is well known, particularly arrangements such as wages, classification etc. are long term arrangements and simply because an Award expires or settlement expires it does not give sufficient justification for the union to raise its demand again and again as a ritual." (emphasis supplied).

The management, therefore, clearly conceded the position that the same benefits that were extended to the employees at the Bombay Factory were being extended to the employees at the Research Centre. The management, it is important to note, accepted the position that arrangements such as wages and classification "are long term arrangements" (which do not provide a justification for fresh demands merely because a settlement or award has expired).

11. On 17th January 1983 during the pendency of the two References to adjudication in respect of the workmen at the Sewri factory, a settlement was arrived at in respect of the demands raised in 1982 for the Hourly Rated Workmen including Laboratory Assistants. The Union at the Research Centre and the management similarly accepted the settlement in respect of the demands raised in 1982 for the Hourly Rated workmen including the Laboratory Assistants. There is no factual dispute about the position that the management extended the same benefits that were given to the workmen at the Sewri Factory by the settlement of 17th September 1983 to the workmen at the Research Centre. At the stage when the settlement was entered into for the Research Centre on 1st December 1983, an adjudication was still pending in respect of the demands for classification made by the Sewri workmen. According to the Union, it was in these circumstances that the workmen, in the settlement at the Research Centre did not press the demands for reclassification, pending the final outcome of the adjudication proceedings.

12. On 20th November 1985 during the pendency of the adjudication in Reference (IT) 123 of 1977, a settlement was

entered into by the management with the monthly paid workmen at the factory. A corresponding agreement was entered into on 10th January 1986 extending to the employees of the Research Centre the benefits of the settlement of 20th November 1985.

13. On 22nd June 1984, the Industrial Tribunal passed an award in Reference (IT) 37 of 1976 and granted the demands made on behalf of the Laboratory Assistants at the Sewri establishment for being placed in the T-1 Grade. The petition filed by the management to challenge the award of the Industrial Tribunal in Reference (IT) 37/76 (the Rane Award) was admitted and the implementation of the award was stayed. The petition was eventually dismissed by a Learned Single Judge of this Court by a judgment and order dated 23rd January 1989. The judgment of the Learned Single Judge was confirmed in appeal by the Division Bench. A Special Leave Petition filed against judgment and order of the Learned Single Judge was dismissed by the Supreme Court. The Laboratory Assistants at the Research Centre had made a demand for reclassification of their grades on 3rd July 1986. The Rane Award in respect of the Laboratory Assistants at the Sewri establishment attained finality after the dismissal of the

Special Leave Petition by the Supreme Court. On 4th June 1991, the Union representing the Laboratory Assistants at the Research Centre reiterated its earlier demand of 3rd July 1986 for the extension of the same benefits to the Laboratory Assistants at the Research Centre. It may be noted that the management implemented on 1st January 1992, the Rane Award by placing the Laboratory Assistants in the Sewri Factory in T-1 Grade. This benefit was given with effect from 13th January 1976 in terms of the Rane Award together with the payment of arrears. In 1992, however, the management did not accept the demand of the Laboratory Assistants at the Research Centre for being granted a parity of classification with the Laboratory Assistants in the Sewri Factory. A demand was made for a reference to adjudication which ultimately resulted in Reference (IT) 96 of 1992.

V

14. As noted in the earlier part of this judgment, a separate Reference, Reference (IT) 123 of 1977 was made by the State Government in respect of various demands of the workmen at the Sewri Factory. Pending a final adjudication thereof, the Industrial Tribunal had passed a Part-I Award on 27th April 1979 in terms of the settlement between the parties. As noted earlier, the same

benefit came to be given to corresponding categories of workmen at the Research Centre by an agreement of 11th May 1979. The proceedings arising out of Reference (IT) 123 of 1977 had resulted in an order of the Supreme Court dated 26th July 1994 remanding back the reference. Eventually, on 24th March 1995 a final award was passed by the Industrial Tribunal upon remand. The benefits of the final award were extended to the Laboratory Assistants working at the Sewri Factory in December 1995 with retrospective effect from 1st October 1979. The grievance of the Union at the Research Centre was that even though the management had specifically agreed by the settlement of 1977 and by the Minutes of the agreement dated 11th May 1979 to extend the wage scales and other benefits governed by the final award in Reference (IT)123 of 1977 to the workmen at the Research Centre, the management eventually refused to do so after the final award came in Reference (IT) 123 of 1977.

VI

The Award:

15. Adjudication proceedings took place before the Industrial

Tribunal in Reference (IT) 96 of 1992 to which the present dispute relates. Evidence was adduced on behalf of the Union in support of its plea that there was historically a parity in the conditions of service governing the workmen at the Research Centre with those at the Sewri Factory. Evidence was also adduced in regard to job content and the nature of the functions discharged by the Laboratory Assistants at the Research Centre and their counterparts at the Sewri Factory. The Industrial Tribunal by its award dated 25th August 2003 held that as a matter of historical fact, there existed a parity in the conditions of service between the two establishments. The Tribunal on a review of extensive evidence that was adduced before it came to the conclusion that the responsibilities and functions of the Laboratory Assistants at the Research Centre were similar to those at the Sewri Factory and that there was no justification on the part of the management in denying to the former, the benefits of the Rane Award. In consonance with the Rane Award, governing Laboratory Assistants at the Sewri Factory, the Tribunal granted to the Laboratory Assistants at the Research Centre, the benefits of an upgradation to T-1 Grade but with effect from the date of reference.

VII

Submissions:

16. On behalf of the management, Senior Counsel conceded the position that right from the inception of the Research Centre, there was a parity in the conditions of service between the employees engaged in the Factory and those at the Research Centre and the Head Office. The submission, however, that was urged on behalf of the management, was that a parity of service conditions is not sufficient to justify a parity of classification and the Reference before the Tribunal was not in regard to the former, but the latter. The submission of Counsel was that a mere similarity of nomenclature, or for that matter, even a similarity of work is not sufficient to sustain a plea of equal pay for equal work. It was urged that the Tribunal had formulated the correct test in law which was whether, having regard to the educational qualifications prescribed, responsibilities placed and the actual work required of the Laboratory Assistants at the Research Centre, the same classification that governed their counterparts in the Sewri establishment should be applied. However, it was submitted that having laid down the correct test, the Tribunal misdirected itself by placing emphasis on the parity of service conditions. Counsel

submitted that the Tribunal (i) Ignored the difference between the Research Centre and Sewri Factory; (ii) Placed undue emphasis on the Standard Operating Procedures and the Manuals; (iii) Ignored the statement in the settlement of 1977 that it did not govern the issue of classification; (iv) Ignored the fact that the demand for reclassification was dropped in the settlement of 1983 which was to remain in force until 30th June 1986; and (v) Ignored the material difference on the basis of which Rane Award came to be delivered.

17. On the other hand, on behalf of the Union, it has been urged that (i) As a matter of historical fact, parity has always existed in all respects both in respect of classification and service conditions between the workmen of the Research Centre and the workmen of the Factory and the Head Office; (ii) The existence of this parity finds recognition in a final and binding judgment of a Learned Single Judge of this Court; (iii) The basis on which the Rane Award upgraded the classification of the Laboratory Assistants in the Sewri Factory is equally applicable to the conditions prevalent for the Laboratory Assistants in the Research Centre; (iv) The nature of the duties, responsibilities and job

content of the Laboratory Assistants at the Research Centre was demonstrated by cogent evidence to be similar to those of their counterparts at Sewri; and (v) In view of the existence of a parity which held the field for over 35 years, the management had not discharged the onus of establishing a valid and proper justification for disturbing this parity.

VIII

18. In considering the rival submissions that have been urged before the Court, it merits emphasis that the reference to adjudication before the Tribunal was on the demand of the Laboratory Assistants working at the Research Centre to the effect that their classification should be upgraded in accordance with the award of the Industrial Tribunal governing the Laboratory Assistants working at the Sewri Factory. The claim for upgradation was based on the Rane Award in Reference (IT) 37 of 1976. The material that has been placed on the record clearly demonstrates, beyond any doubt whatsoever, the existence of parity in the conditions of service between the workmen engaged at the Sewri Factory and the Head Office on the one hand, and their counterparts at the Research Centre on the other. The submission

of Counsel appearing on behalf of the management that the existence of such parity is irrelevant to determining the dispute on classification still warrants a closer look in a subsequent part of this judgment when the consequence of such parity will merit consideration. At this stage, it is abundantly clear from the material before the Court that ever since the Research Centre was established in 1958, the workmen at the Research Centre were given the benefit of the same conditions of service as the workmen at the Sewri Factory. When the Research Centre came to be moved from the Sewri Factory to Andheri in 1967, all the existing workmen were transferred on the same terms and conditions of service. Initial appointments in the Research Centre reflected a parity of conditions with those in the Sewri Factory including to the post of Laboratory Assistants. In the settlement of 28th November 1973, the management agreed to maintain a parity in the conditions of service by accepting that it would extend the benefits of the reference covering the Sewri Factory workmen to the Andheri Research Centre. The pattern of industrial settlements was that while on the one hand, it was noted that the research function had a special character which was different from the operation of the factory, nonetheless the same terms and

conditions that governed the factory would apply to the Research Centre. Indeed, it would merit emphasis that quite apart from the functions of the Research Centre being regarded as inferior to those of the factory, the settlement of 1973 evinced a clear statement that merit and contribution was all the more important in the research function. In the next settlement of 7th July 1977, the management agreed that the interim arrangement that had been arrived at for the Sewri Factory on 11th May 1977, pending an adjudication in Reference (IT) 123 of 1977, would apply to the Research Centre. Parties agreed that the ultimate outcome of Reference (IT) 123 of 1977 would be extended to the employees at the Research Centre. Again when an agreement was arrived at on 21st April 1979 pending an adjudication for the Sewri workmen, a similar agreement was arrived at on 11th May 1979 for the workmen at the Research Centre including the Laboratory Assistants. The agreement of 11th May 1979 assumes significant importance. On 11th May 1979, there was a clear and categorical acceptance by the management and the Union that "the terms and conditions of the Bombay Factory settlement will be extended, wherever applicable to the corresponding categories of workmen in the research unit". Now there is no dispute about the factual

position that when the Tribunal passed a Part-I Award on 27th April 1979 in terms of a settlement in respect of the Sewri workmen, the same benefits were conferred upon the workmen of the Research Centre including Laboratory Assistants. The Laboratory Assistants at the Research Centre were given the same benefits that were extended to their counterparts at the Sewri Factory and this could only have been on the basis that the Laboratory Assistants at Sewri and at the Research Centre were regarded as "corresponding categories" within the purview of the Minutes dated 11th May 1979. The understanding of the management was not any different because when the workmen at the Research Centre had raised demands in February 1982 concerning the Hourly Rated employees, it was the management who emphasised that both the past and present terms and conditions at the Research Centre were on the basis of the settlements at the Factory. While emphasising this in its letter dated 29th December 1982 to the Assistant Commissioner of Labour, the management reiterated that arrangements such as wages and classification were long term arrangements which did not warrant interference merely because a settlement or award had expired.

19. The existence of parity in the conditions of service is not merely a matter of record, but in so far as the parties to these proceedings are concerned, a matter of a final judgment of this Court which binds both the management and the Union. The question of parity fell for consideration before a Learned Single Judge of this Court, Hon'ble Dr.Justice S. Radhakrishnan, in **Hindustan Lever Ltd. vs. Hindustan Lever Employees' Union** (W. P. 1335 of 1995 and connected Petitions, decided on 29th October 2002). Dealing with the parity between the Factory staff and the Head Office, the Learned Judge held thus:

> "One has to clearly bear in mind that right from 1952 the Thakore Award which was a composite Award dealing with Office Staff as well as Factory Staff the parity was maintained. Subsequent thereto, even in Bhojwani's Award such a parity was maintained. Apart from both the aforesaid Awards, the employer and the employees' Union have arrived at the Settlement in 1979 with regard to Sewri Factory and the same parity was adopted in the Settlement with regard to the Head Office. Thereafter if one were to analyse the Dongare Award, the same parity was maintained in fixing the pay as well as the allowances. After that, in the year 1983 the Settlement which was arrived at with regard to the Head Office was again followed with regard to the Factory. Under the aforesaid facts and circumstances, specifically from 1952 to 1983 consistently for the period of almost 30 years, such a parity has been followed. Even the Division Bench of our High Court while delivering the judgment in Writ Petition No.864 of 1986 dated 6.9.1989, has held that such a parity was not to be there, it would cause injustice, and the Industrial Court by maintaining such a

> parity was held to be proper, as clearly observed in paragraph 45 of the aforesaid judgment."

The Learned Judge noted the existence of parity between the Head Office, the Factory and the Research Centre and observed that a disrupting of this parity which had held the field for thirty years would cause grave injustice:

> "The employer themselves have consistently extended the Settlement, once entered into between the Head Office and thereafter extending it to the Factory and the Research Centre or vice-versa. Based on the above, for almost 30 years, the same parity was maintained. Even the Division Bench order has stated that if there is deviation from the same, that would cause the injustice. Hence, I am clearly of the view that there is nothing perverse or illegal in adopting parity principle in the above awards."

The Tribunal in the present case has adverted to the judgment of Dr.Justice S. Radhakrishnan in paragraphs 43, 44 and 45 of the award. The submission that has been urged on behalf of the management that a parity of service conditions is irrelevant to determining the issue of classification cannot be accepted in the facts of this case. Undoubtedly, the question as to whether a demand for reclassification is justified, having regard to the upgradation of another post under the same management, would

have to be evaluated having regard to the job content, functions and responsibilities of the two posts. Whether the duties, responsibilities and functions of Laboratory Assistants at the Research Centre are analogous to those of the Sewri Factory would now be considered shortly hereafter. At this stage, it warrants emphasis that the claim of the Union was *not only* based on the existence of parity of service conditions between the workmen at the Research Centre, the Sewri Factory and the Head Office. Apart from the parity which existed as a matter of fact for several decades, it is an admitted position that the workmen at the Research Centre were regarded as a 'corresponding category' to the workmen at the Sewri Factory. For instance, it is on this basis that the benefit of the Part-I Award in Reference (IT) 123 of 1977 was conferred upon the Laboratory Assistants at the Research Centre in pursuance of the Minutes dated 11th May 1979. Moreover, the Laboratory Assistants at the Research Centre were granted the same benefits as their counterparts obtained in the Sewri Factory by the terms of the Part-I Award. The facts before the Court demonstrate more than the existence of parity as a historical fact. The facts clearly establish that the conditions of service that were applied to the Laboratory Assistants at the

Factory were the very conditions that were made applicable to the Laboratory Assistants at the Research Centre. Indeed, during the course of the hearing of these proceedings, Counsel appearing on behalf of the management has conceded to the following position which obtained in fact (i) There was a parity in wages and other conditions of service for every category between the Research Centre and the Sewri Factory right from the inception; (ii) In granting parity, the corresponding category for Laboratory Assistants at the Research Centre was the category of Laboratory Assistants at the Sewri Factory; and (iii) Until the Rane Award was implemented in 1991-92, the same benefits that were made available to the Laboratory Assistants at Sewri were granted to those at the Research Centre.

20. On behalf of the management, however, reliance has been placed on two circumstances to suggest that parity of classification was not an accepted position. The first circumstance is a provision contained in clause 4 of the Settlement dated 7th July 1977. Clause 3 of the settlement to which a reference has already been made earlier, contains an agreement that the outcome of the proceedings in Reference (IT) 123 of 1977 will be extended to the

employees at the Research Centre. Clause 4, however, provided thus:

> "4. The following demands of the Bombay Factory workmen in the aforesaid Reference have no application to the employees in Research Centre, Andheri:
>
> Demand 2 of set 1 and demand 1 of set 2 relating to classification."

On the basis of the aforesaid provision, it was urged before the Court that the demand for classification in respect of the factory workmen had no application to the employees of the Research Centre. On close reflection, however, it has emerged before the Court that the aforesaid submission suffers from a basic error. Clause 4 of the settlement dated 7th July 1977 referred to demand No.2 of Set-1 and demand No.1 of Set-2 relating to classification in a particular Reference (it being common ground that the Reference was (IT) No.123 of 1977). Clause 4 stated that the above mentioned demand of classification would have no application to the employees at the Research Centre. From the material before the Court it emerges that Reference (IT) 123 of 1977 did not relate to any dispute concerning the classification of the Laboratory Assistants in the Sewri Factory. There is merit in the submission of

the Union that *ex-facie* Reference (IT) 123 of 1977 could not have covered a dispute in regard to the classification of the Laboratory Assistants at the Sewri Factory since Reference (IT) 37 of 1976 relating to the classification of the factory workmen had already been referred to adjudication prior in point of time in 1976. Reference (IT) 123 of 1977 was a composite reference covering Hourly Rated, Clerical and Technical workmen engaged at the Sewri Factory. On 21st April 1979, a settlement was arrived at for Hourly Rated workmen at the Sewri Factory and since a reference to adjudication was pending, the settlement contemplated that parties would move the Tribunal for an award in terms thereof. The demand of job classification was dealt with in clause 10-C of the Settlement by which it was agreed to form a Committee consisting of workmen and Company representatives to resolve this issue. The issue of classification originating in Reference (IT) 123 of 1977 was eventually resolved by a settlement on 17th September 1983. Part-B of Clause 1 of the settlement states that the jobs shall be upgraded as enumerated in Annexures-B, C and D. A perusal of the annexures to the settlement would clearly establish that the jobs which were mentioned there, did not exist in the Research Centre. This factual position has not been disputed

by Counsel appearing on behalf of the management in the course of his submissions. Clause 23 of the 1983 Settlement provided that in the Bombay Factory all other terms and conditions which were not modified would continue unaltered. Obviously, this did not comprehend the dispute in regard to the classification of Laboratory Assistants at the Bombay Factory in respect whereof Reference (IT) 37 of 1976 was pending. Hence, it is evident that the dispute in regard to the reclassification of the Laboratory Assistants in the Sewri Factory was not the subject matter of dispute in Reference (IT) 123 of 1977. There is, therefore, merit in the submission of the Union that clause 4 of the settlement dated 7th July 1977 must be read in that context.

21. The second circumstance that has been relied upon by Counsel appearing on behalf of the management is clause 15 in the settlement of 1st December 1983 by which it was agreed between the Union and the workmen that all demands which had not been specifically agreed, would be regarded as being dropped and clause 19 which provided that during the pendency of the settlement neither party would raise any demand involving a financial burden on the management. It was submitted on behalf of

the management that the demand for reclassification that was raised on 3rd February 1982 was consequently dropped when the settlement of 1st December 1983 was arrived at. On the other hand, on behalf of the workmen, it was submitted that the reason why the demand in regard to reclassification was dropped in the settlement of 1st December 1983 was because a corresponding demand by the Factory workmen was pending adjudication in Reference (IT) 37 of 1976 and the historical practice in the company was to follow the awards or settlements that governed the factory workmen, when arriving at the conditions for the Research Centre workmen. Be that as it may, the settlement of 1st December 1983 cannot, consistent with the position in law, be regarded as an abandonment of the demand for reclassification by the workmen of the Research Centre for all times in the future. At the highest, such a demand could not have been made during the tenure of the settlement. The Rane Award was delivered on 26th June 1984. The Union at the Research Centre demanded reclassification on 3rd July 1986 and after the Rane Award obtained finality, submitted a demand again on 4th June 1991. The Union cannot be regarded as being precluded in doing so and from pressing the demand upon the expiry of the settlement dated 1st

December 1983.

22. That leads the Court to the next aspect of the controversy, namely, the basis and foundation of the Rane Award. The reference to adjudication in regard to a reclassification of the Grades of the Laboratory Assistants in the establishment of the factory at Sewri culminated in an award on 22nd June 1984. Paragraph 14 of the award contains the essence of the reasoning of the Tribunal and was to the following effect:

> "The evidence of these witnesses shows that since 1971, the Company gradually started reducing the number of Chemists and asking the Laboratory Assistants to do the Chemists' work. The number of Chemists was gradual reduced from 13 in 1971 to 5 in 1987. This was done not because of any reduction in any analytical work. This gradually reduction in the number of Chemists was made by shifting their work to Laboratory Assistants/Testers by increasing their number gradually. It may also be noted that Chemists do not work in shifts. They work only in General Shift. It is admitted that the second shift was started in 1971. However, even today, no Chemists works in third shift. It is admitted that analytical work is carried on in all the three shifts. Now, when there is no Chemist working in the third shift, it naturally follows that Laboratory Assistants/Testers do analytical work in third shift and there is nobody to supervise their work. The evidence on record shows that those recruited as Laboratory Assistants after 1974 are Science Graduates. From all these facts and circumstances, it can safely be concluded that since 1971, the nature of Laboratory Assistants' work has been changed gradually from manual to technical and Laboratory Assistants do

> Chemists work and so, the present classification given to them cannot be considered as correct."

The foundation and reasoning of the award of the Industrial Tribunal was that since 1971 the nature of the work of the Laboratory Assistants in the factory had gradually altered from work of a manual nature to work of a technical nature. The work of the Laboratory Assistants at the factory comprehended some part of the work of the Chemists since it was on record that Chemists worked only in the General Shift. The Laboratory Assistants carry out analytical work in all the three shifts.

23. The Rane award of the Industrial Tribunal was challenged by the management in a petition which was disposed of by a Learned Single Judge of this Court on 23rd January 1991. This Court in the course of its judgment observed that the work which was being done by the Laboratory Assistants could not be regarded as purely manual though it may not be possible to hold that it was scientific in the full sense of the term. Having said that, this Court was of the view that in these circumstances, if a technical grade had been applied to persons whose work was not

wholly menial or ministerial, there was no mistake in the award of the Tribunal:

> "Whatever may have been the position in the past Laboratory Assistants/Testers are presently doing work which cannot be said to be purely menial or ministerial – though it may be possible to say that it is not scientific in the full sense of the word. If there is a technical grade and if there are persons who are doing 48 hours of work and whose work cannot be said to be either wholly menial or ministerial, I do not see what error the Tribunal has committed in placing Laboratory Assistants/Testers in the 'T' grade."

In the course of the judgment of this Court, it was observed that over a period of time, the Laboratory Assistants had acquired some proficiency and may be rendering a routine part of the job of the Chemist. Once again this Court reiterated that position thus:

> "In the past, Laboratory Assistants were more or less menial Assistants to Chemists. They had to set up apparatus and get the material required for the analytical work required to be done by the Chemists. In course of time the Laboratory Assistants acquired some proficiency and they were entrusted with what may be said to constitute the routine part of a Chemist's job. In other words, they progressed from the purely menial to the doing of a quasi scientific job."

The Court recognised in the following observations that the Laboratory Assistant may not be scientific workmen of the same

order as Chemists:

> "This of course is not to say that the Laboratory Assistants have come up to the same level as Chemists and that they should get the same emoluments as latter. The Chemists have to undertake a higher responsibility in that they supervise the testing done by the Laboratory Assistants and collate the tests carried out by the number of Laboratory Assistants working under them. Their duties have passed into the realm of research and for that reason they will continue to be on a higher level vis-a-vis the Laboratory Assistants".

In the circumstances, the Court affirmed the award of the Industrial Tribunal. The Industrial Tribunal had held that there was no justification in the demand of the Laboratory Assistants being placed in T-2 Grade but allowed the lower grade, T-1, to Laboratory Assistants on the ground that they were doing work which was technical in nature. It was this award of the Tribunal that was confirmed by the Judgment and Order of the Learned Single Judge. The judgment of the Learned Single Judge, it may be noted, was thereafter confirmed by the Division Bench and a Special Leave Petition against the judgment of the Division Bench was dismissed by the Supreme Court.

24. The question which falls for consideration before the

Court is whether the reasons which weighed with the Tribunal in the Rane Award find application to the Research Centre having regard to the nature of the duties and functions rendered by the Laboratory Assistants, the job content and qualifications. It would be necessary to take issue of qualifications for consideration at the outset. On the question of qualifications, a considerable degree of evidence was adduced on the part of the Union. Shri R.M. Bagayathkar, who deposed on behalf of the workmen was engaged in the Central Laboratory in the Sewri Factory as a Laboratory Assistant. In the course of his evidence, the workman stated that the minimum qualification required for the grade of Laboratory Assistant in the Central Laboratory is an SSC and that after joining the Company, the workman was required to complete a Company sponsored course in Industrial Chemistry conducted by the British Institute of Engineering Technology, Mumbai and be trained. The workman, however, stated that in the event that a workman was a graduate in Science, it was not compulsory for him to undergo training or complete the course in Industrial Chemistry. Shri R.S. Prabhu who was also working as Laboratory Assistant, initially in Grade-I and subsequently in Grades K and M by promotion, stated that the terms of appointment for Laboratory

Assistants at the Sewri Factory as well as at the Research Centre were identical. On his part, he stated that he had undergone two years' training and completed a course in Industrial Chemistry which was sponsored by the management at the British Institute of Engineering Technology. Amongst the documents which were relied upon by the Union, was an advertisement for the post of Laboratory Assistant in which it was specifically prescribed that the minimum qualification would be an SSC and that the candidate would have to undergo a two year training and the course in Industrial Chemistry. A certificate of completion of the course in Industrial Chemistry has been annexed to the documents relied upon by the Union. It would also be material to note that in para 27 of the statement of claim in the present case, the Union submitted a comparative chart of the educational qualifications of the Laboratory Assistants in the Sewri Factory on the one hand, and the Research Centre on the other, which demonstrated that several workmen had Graduate and Post Graduate qualifications. The management in its reply stated that when the workmen were recruited, they had passed the SSC and after joining the Company, most of them acquired higher qualifications. On the basis of the material before the Court, therefore, it is evident that the

qualifications that were prescribed by the management for the Laboratory Assistants at the Sewri Factory were at par with the qualifications prescribed for the Laboratory Assistants at the Research Centre. The qualifications prescribed as well as the actual qualifications of the Laboratory Assistants at the Research Centre cannot be regarded as being interior to those for the Sewri Factory.

25. The next aspect of the matter which would merit consideration is a comparison of the duties, functions and responsibilities attached to the post of a Laboratory Assistant at the Research Centre on the one hand, and the Sewri Factory on the other. In so far as the workmen at the Sewri Factory are concerned, the judgment of this Court which had affirmed the Rane Award had emphasised that after 1971, the job content of the Laboratory Assistants at the factory had undergone a change from being essentially manual to one that was technical in nature. The Learned Single Judge held, in a judgment which has now attained finality, that the work which was being done by the Laboratory Assistants at the Research Centre could not be regarded as being of the same high order as the work of the Chemists. In fact, this

Court was of the view that while the work of a Chemist had progressed into the zone of research, the work of the Laboratory Assistants was technical or quasi scientific in nature.

26. In the course of the evidence of Company's witness, Shri G.R. Dhanuka, sought to make a distinction between analytical work on the one hand, and experimental work on the other. The witness sought to establish that on the one hand at the Sewri Factory, the Laboratory Assistants were required to test raw materials that were received from suppliers and the products that were manufactured in the factory to ensure quality control. This work, according to the witness was analytical in nature. On the other hand, according to the witness, the work done by the Laboratory Assistants at the Research Centre was experimental in nature and the Laboratory Assistants were assisting the Scientists in conducting experiments. The management's witness stated that though the Laboratory Assistants did perform some analytical work in certain sections such as Instrumentation and Information, these workmen do not carry out any work of analysis at all. However, in the course of his cross-examination, the witness admitted that as on date, no Laboratory Assistant was working in the

Instrumentation Section and the Laboratory Assistants who were attached to the Information Centre were thereafter promoted to T-1 Grade. A perusal of the evidence of the management's witness would reveal that the distinction that was sought to be drawn was between experimental work on the one hand, and analytical work on the other. The distinction was not between the manual and technical work and it was not the case of the witness of the management that the work of the Laboratory Assistants at the Research Centre is manual in nature. Fairly even before this Court Counsel appearing on behalf of the management has stated that it is not the case of the management that the Laboratory Assistants at the Research Centre do work of a manual nature. The management's witness admitted during the course of the cross-examination that in the Research Centre, there is a separate category of process workers who are required to carry out manual work such as cleaning apparatus, house keeping and upkeep of the glass ware. The following admission in the course of the cross-examination of the management's witness clearly establishes that the work which is being rendered by the Laboratory Assistants at the Research Centre is technical in nature and character:

"25. It is true that the Laboratory Assistants in Research

> Centre are using and operating instruments, namely, P.M. Meter, Gas Liquid, Tobateo Graphy, Moister Analyser, Lavivond Tintometer, Ultraviolate/visible Spectro Photometer, Visco Meter. If such instruments exist, they are being used by the Laboratory Assistants in the factory of Sewri. Now I am shown my affidavit Ex.C-56. Portion marked 'A' in my affidavit now read over to me. The words equipments and instruments referred in para 'A' are inclusive of (i) P. T. N. M. R. (2) F. T. I. R. (e) X. R. D. (4) COULTER COUNTER 50 Atomic Absorption Spectroscopy, (6) G. L. C. (7) Electro Microscope, (8) Grabender Viscometer (9) T. G. A. (10) Blood Analyser. It is true that our Central Laboratory does not have such advanced equipments."

Indeed, the management's witness accepted the fact that the equipments which are being handled at the Research Centre are more advanced in nature than those at the Sewri Factory. In so far as supervision is concerned, the management's witness admitted in the course of his cross-examination that the Laboratory Assistants even in the Central Laboratory at Sewri reported to the officer who assigned the work and explained the procedure to be followed for carrying out work in the Central Laboratory. The witness similarly also stated that even in the Central Laboratory at Sewri, there is one officer who supervises the Laboratory, three or four Chemists and about a dozen Laboratory Assistants.

27. Now in this background, a reference may be made to the detailed evidence that was brought on the record on the part of the Union. Shri Bagayatkar who is employed as a Laboratory Assistant at the Sewri Factory deposed that even at the factory establishment, supervision is carried out by the Chemists or, as the case may be, Laboratory Officer/Manager. Shri R.S. Prabhu, who deposed on behalf of the Union emphasised that a comparative analysis of the work and of the procedure of analysis carried out by the Laboratory Assistants at the Research Centre and at Sewri has been prepared after inspecting almost 350 record books and 70,000 pages. In paragraph 15 of his notes of evidence, he stated thus:

> "I was to undergo 2 years training and also successfully complete a Company sponsored course in 'Industrial Chemistry' conducted by the British Institute of Engineering Technology (B. I. E. T.). During this period I was to grasp the required technical knowledge and expertise to work as a full-fledged Lab. Assistant. Only after completing this course and training successfully and if the Company found me suitable in the trade of Lab. Assistant, I was to be absorbed and made regular i.e. permanent in the Company's services. ... For all Lab. Assistants employed by the Company at Research Centre and as well as Sewri Factory the terms of appointment are identical and exactly the same."

The witness stated the names of certain employees who had been

transferred from the Central Laboratory at Sewri to the Research Centre.

28. The Union brought on the record before the Industrial Tribunal voluminous and scientifically compiled evidence to establish that each one of the items of work that is carried out by the Laboratory Assistants at the Sewri Factory is carried out by their counterparts at the Research Centre. The Union submitted an inspection report based on an inspection of the record books of the management which was marked as U-36. The Company's response to U-36 has been annexed in the documents filed by the Union before the Court. The Union has prepared a chart containing a reference to 55 different kinds of analysis that are carried out by Laboratory Assistants both at the Factory as well as at the Research Centre. Reference to each one of the analytical tests is duly supported by cross references to the reports maintained at the Central Laboratory and the Research Centre. In both the Research Centre as well as the Sewri Factory, Standard Operating Procedures are followed by the Laboratory Assistants, these being in the form of a Manual.

29. When a question as regards the equivalence of grades comes up for adjudication, certain well settled principles are to be borne in mind. The judgments of the Supreme Court elaborate upon the principles, which can be formulated as follows:

-(i) In determining the question of classification or equivalence, the nomenclature of the post is not a decisive consideration, nor for that matter, is the volume of the work or extent of activities conclusive. All dimensions of the job and the levels of accuracy and dexterity have to be considered. (Harbans Lal vs. State of Himachal Pradesh, (1989) 4 SCC 459); (ii) There may be qualitative differences in regard to reliability and responsibility in certain cases. The functions may be the same, but the responsibility may be different. (Federation of All India Customs and Central Excise Stenographers vs. Union of India, (1988) 3 SCC 91); (iii) Differences in the degree of responsibility, reliability and confidentiality would be a valid ground of differentiation. (State Bank of India vs. M. R. Ganesh Babu, (2002) II LLJ 829); and (iv) Primarily what is required is an evaluation of the duties and responsibilities of the respective posts (Union of India vs. Tarit Ranjan Das, (2040) I CLR (SC) 12).

30. Counsel appearing on behalf of the management has relied upon the aforesaid judgments of the Supreme Court which spell out criteria for applying the doctrine of equal pay for equal work. Strictly speaking, in the present case, the Union has sought an upgradation in the classification of Laboratory Assistants at the Research Centre on the basis of the classification that was allowed as a consequence of the Rane Award. In the present case, there is firstly an admitted historical parity between the workmen of the Research Centre on the one hand, and the workmen at the factory and Head Office on the other. That parity was extended consciously to Laboratory Assistants. Secondly, the qualifications, job content, duties and responsibilities of the Laboratory Assistants at the Research Centre and at the Sewri Factory have been demonstrated on the basis of the evidence to be analogous in character. The historical parity and the treatment of Laboratory Assistants at the Sewri Factory and the corresponding category of the Laboratory Assistants at the Research Centre were therefore, founded on a valid and cogent basis. Thirdly, the nature of the work that has been rendered by the Laboratory Assistants at the Research Centre is undoubtedly of a technical nature and

character. The workmen at both the establishments carry out work of a similar description involving similar responsibilities and functions. Fourthly, the qualifications prescribed for appointment of the Laboratory Assistants at the factory are similar, if not the same, as those prescribed for Laboratory Assistants at the Research Centre. Fifthly, the rationale which underlies the Rane Award and the reasoning contained in the judgment of the Learned Single Judge of this Court applies to the case of the Laboratory Assistants at the Research Centre as well.

31. In these circumstances, I am of the view that there is no merit in the submission urged on behalf of the management. The Tribunal has laid down, even according to the management, the correct test in job evaluation. The challenge of the management was to the application of the test. The conclusions drawn in the Award are consistent with the evidence and the material produced on record. This Court would not be justified in substituting the view of the Tribunal which is based on evidence on record. The award of the Tribunal has been criticized by Counsel for the employer, but this Court would not be justified in interfering with the award merely on the supposed criticism that it has not been artistically worded.

The substance of the award has to be scrutinized and the substance of the award is consistent with law just as the findings of the Tribunal are based on evidence.

32. In so far as the Petition filed by the Union is concerned, the Tribunal has furnished cogent reasons for holding that the benefit of the award should be given from the date of the reference to adjudication. The reference was made to adjudication on 22nd December 1992. The Tribunal has indicated a possible rationale for not granting the benefits for the extended period commending from 13th January 1977. On the balance, the view of the Tribunal in regard to the date from which the award should be made operational is a possible view to take and does not call for interference under Article 226 of the Constitution. The award has already been implemented.

33. In the circumstances both the Writ Petition filed by the management and the Petition of the Union shall stand dismissed. There shall be no order as to costs.

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